IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 16742 of 2006

Date of decision : 3-11-2006

Executive Engineer,PWD(B&R)Branch,
Narnaul and another … Petitioner

Versus

Smt.Santosh & another … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. D.S.Nalwa, Addl. A.G. Haryana,
for the petitioner

…

ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 27-10-2005 Annexure P-1, vide which the learned Labour Court, Gurgaon, has set aside the order terminating the services of respondent No.1-workperson and ordered her reinstatement with continuity of service along with 50 per cent back wages.

Respondent No.1-workperson, on 1.6.1988, joined the service of the petitioner-department as Beldar. Her termination from service with effect from 1.9.1996 gave rise to an industrial dispute. She alleged that her services were terminated illegally in violation of Section 25-F of the Industrial Disputes Act,1947 (in short, the Act). On the other hand, the stand of the petitioner-department was that she was employed for a specific work and that she did not work continuously and remained absent from duty

from time to time. It also took the stand that she had left the job of her own.

It may be apt to mention that before the Labour Court, the department failed to adduce any evidence on its behalf despite the grant of numerous opportunities and ultimately, its evidence was closed by order of the Court.

The learned Labour Court after holding that her services were terminated illegally in violation of Section 25-F of the Act, passed the impugned award in the manner indicated above. Hence, the present writ petition by the department.

We have heard the learned Additional Advocate General,Haryana, and have also gone through the paper-book carefully.

Respondent-workperson had worked with the petitioner-department from the year 1988 till the termination of her services with effect from 1.9.1996. She when appeared as WW-1 deposed that she continuously worked during the said period. No retrenchment compensation was paid when her services were terminated. The department could not rebut it before the Labour Court as their evidence was closed by order of the Court. Thus, the petitioner-department in the present petition has questioned the completion of 240 days of the respondent-workperson preceding 12 months from the date of her termination. The department has annexed voluminous record along with the present petition. However, the learned Additional Advocate General, in all fairness, has conceded that in fact she had completed 240 days preceding 12 months from the date of her termination from service. Thus, this issue is no more res integra. Admittedly, there was non-compliance of Section 25 of the Act and the learned Labour Court has rightly held that her termination was illegal and thus, not sustainable.

Learned State counsel has next argued that the respondent-workperson has not adequately proved the plea of remaining idle during the remaining period and as such, grant of back-wages by the Labour Court to the extent of 50 per cent is excessive and has referred to a judgment of the Hon'ble Supreme Court in G.M.Haryana Roadways v. Rudhan Singh, 2005 (5) SCC591. In Rudhan Singh's case(supra), one of the important factors

for the denial of back-wages was the length of service which was less than a year, which is not the case here.

In Noida and another v. Hari Dutt, 2006 SCCC (L&S) 1083, the Labour Court had directed payment of back-wages of 50 per cent which were raised to full back wages by the High Court. The Hon'ble Supreme Court set aside the decision of the High Court and confirmed the award of the Labour Court.

In Allahabad Jal Sansthan v. Daya Shankar Rai and another, 2005(5) SCC-124, it has been held by the Hon'ble Supreme Court that it is necessary to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered, but the golden mean may be arrived at, and opined that interest of justice would be subserved if the workman is awarded 50 per cent of back-wages. Therefore, applying the norms laid down by the Hon'ble Apex Court, the grant of 50 per cent back-wages in this case is not excessive in any manner.

No other point has been urged.

In view of what has been stated above, we are of the opinion that the learned Labour Court has rightly answered the reference. We do not find any infirmity with the award passed by the Labour Court which is just and reasoned. Accordingly, the petition being without any merit is dismissed in limine.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

November 3, 2006
JS